

(d) *Initial rent.* Except as necessary to correct errors in establishing the initial rent in accordance with HUD requirements, the adjusted rent to owner must not be less than the initial rent.

(Information collection requirements in this section have been approved by the Office of Management and Budget under control number 2577-0169.)

§ 983.255 Special adjustment of rent to owner.

(a) *HUD discretion.* (1) At HUD's sole discretion, HUD may approve a special adjustment of the rent to owner. An HA may only make a special adjustment of the rent to owner if the adjustment has been approved by HUD.

(2) The owner does not have any right to receive a special adjustment.

(b) *Purpose of special adjustment.* A special adjustment may only be approved to reflect increases in the actual and necessary costs of owning and maintaining the contract units because of substantial and general increases in:

- (1) Real property taxes;
- (2) Special governmental assessments;
- (3) Utility rates; or
- (4) Costs of utilities not covered by regulated rates.

(c) *Limits on special adjustment.* (1) A special adjustment may only be approved if and to the extent the owner demonstrates that cost increases are not adequately compensated by application of the published annual adjustment factor at the contract anniversary (see § 983.254). The owner must demonstrate that the rent to owner is not sufficient for proper operation of the housing.

(2) The adjusted rent may not exceed the reasonable rent as determined by a comparability study in accordance with § 983.256.

(d) *Financial information.* The owner must submit financial information, as requested by the HA, that supports the grant or continuance of a special adjustment. For HAP contracts of more than twenty units, such financial information must be audited.

(e) *Term of special adjustment.* (1) The HA may withdraw or limit the term of any special adjustment.

(2) If a special adjustment is approved to cover temporary or one-time

costs, the special adjustment is only a temporary or one-time increase of the rent to owner.

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§ 983.256 Reasonable rent.

(a) *Requirement.* (1) The HA may not enter an agreement to enter into housing assistance payments contract until the HA determines that the initial rent to owner under the HAP contract is a reasonable rent.

(2) During the term of a HAP contract, the rent to owner may not exceed the reasonable rent as determined by the HA.

(3) At least annually during the HAP contract term, the HA must redetermine that the current rent to owner does not exceed a reasonable rent.

(b) *Comparability.* The HA must determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units. To make this determination, the HA must consider:

- (1) The location, quality, size, unit type, and age of the contract unit; and
- (2) Any amenities, housing services, maintenance and utilities to be provided by the owner in accordance with the lease.

(c) *Appraisal*—(1) *Determining initial rent.* (i) To determine that the initial rent to owner is reasonable, the HA must use a qualified State-certified appraiser who has no direct or indirect interest in the property or otherwise.

(ii) For each unit type, the appraiser must submit a completed comparability analysis on Form HUD-92273 (Estimates of Market Rent by Comparison—the form is available at the Department of Housing and Urban Development, HUD Custom Service Center, 451 7th Street, SW, Room B-100, Washington, DC 20410) for HA review and approval. The appraisal must use at least three comparable units in the private unassisted market.

(iii) The HA must certify to HUD that the initial rent to owner for a unit does not exceed the reasonable rent.

(2) *Annual Adjustment: Comparability study.* (i) In determining the annual adjustment of rent to owner (in accordance with §983.254), the adjusted rent to owner must not exceed a reasonable rent as determined by an HA “comparability study.”

(ii) The comparability study is an analysis of rents charged for comparable units. The HA comparability study must determine the reasonable rent for the contract units as compared with rents for comparable unassisted units. The adjusted rent for a contract unit may not exceed the reasonable rent as shown by the comparability study.

(iii) The comparability study must include a completed comparability analysis for each unit type on Form HUD-92273 (Estimates of Market Rent by Comparison). The comparability study may be prepared by HA staff or by another qualified appraiser. The appraiser may not have any direct or indirect interest in the property or otherwise.

(iv) The comparability study must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units.

(v) If the owner requests a rent increase by the 120 day deadline (in accordance with §983.254(a)), the HA must submit a comparability study to the owner at least 60 days before the HAP contract anniversary. If the HA does not submit the comparability study to the owner by this deadline, an increase of rent by application of the annual adjustment factor (in accordance with §983.254(b)) is not subject to the reasonable rent limit.

(d) *Owner certification of rents charged for other units.* By accepting each monthly housing assistance payment from the HA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner must give the HA information requested by the HA on rents charged by the owner for other units in the premises or elsewhere.

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§983.257 Other subsidy: Effect on rent to owner.

(a) *HOME.* For units assisted under the HOME program, rents are subject to requirements of the HOME program (24 CFR 92.252).

(b) *Combining subsidy.* The HA may only approve or assist a project in accordance with HUD regulations and guidelines designed to ensure that participants do not receive excessive compensation by combining HUD program assistance with assistance from other Federal, State or local agencies, or with low income housing tax credits. (See 42 U.S.C. 3545(d) and section 3545 note.)

(c) *Other subsidy: HA discretion to reduce rent.* The HA may reduce the initial rent to owner because of other governmental subsidies, including tax credit or tax exemption, grants or other subsidized financing.

(d) *Prohibition of other subsidy.* For provisions prohibiting PBC assistance to units in certain types of subsidized housing, see §983.7(c).

§983.258 Rent to owner: Effect of rent control.

In addition to the rent reasonableness limit, and other rent limits under this rule, the amount of rent to owner also may be subject to rent control limits under State or local law.

§983.259 Correction of rent.

At any time during the life of the HAP contract, the HA may revise the rent to owner to correct any errors in establishing or adjusting rent to owner in accordance with HUD requirements. The HA may recover any excess payment from the owner.

§983.260 Housing assistance payment: Amount and distribution.

(a) *Amount.* The monthly housing assistance payment equals the gross rent, minus the higher of:

- (1) The total tenant payment; or
- (2) The minimum rent as required by law.

(b) *Distribution.* The monthly housing assistance payment is distributed as follows:

- (1) The HA pays the owner the lesser of the housing assistance payment or the rent to owner.